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SUBJECT: KOSOVO: CHALLENGES OF PROPERTY AGENCY TRANSITION

Classified By: Ambassador Tina S. Kaidanow for Reasons 1.4 (b), (d).

11. (C) SUMMARY. Following its transition from UNMIK to Kosovo Government/ICO stewardship, the Kosovo Property Agency (KPA) faces a challenge to its continued effectiveness. Unless the Serbian government agrees to cooperate with the refashioned KPA, the KPA will run out of property disputes to adjudicate. UNMIK established the KPA in 2006 to resolve property disputes arising out of the 1999 conflict. Thus far, it has resolved approximately 11,000 of almost 40,000 claims filed, with nearly 90% of claimants being Kosovo Serbs. The KPA has maintained branch offices in Serbia to assist claimants living there and in order to access cadastral records kept there, a vital element of adjudicating claims. However, the Serbian government, in keeping with its policy of non-engagement with the ICO, ceased its relationship with KPA on June 15 when the KPA, in accordance with the Ahtisaari plan, became a GOK/ICO institution.

12. (C) Summary, cont. KPA officials are concerned that without cooperation with the Serbian government in Belgrade that the KPA will be unable to adjudicate cases or continue to function by the end of the year. They are also confused by the presence of two executive directors -- one appointed by UNMIK and the other by the ICO. The KPA board, which includes the Embassy, UNMIK, ICO, and EULEX, has discussed the situation and agreed that continued UNMIK participation in the KPA is vital for re-starting Serbian government cooperation. The group also recognizes that it needs to ensure the GOK's continued support for the KPA process, which remains politically unpopular in Kosovo. The Serbian government's willingness to cooperate will be a test of its stated desire to improve the lives of Kosovo Serbs. END SUMMARY.

KPA Background

13. (U) The Kosovo Property Agency (KPA) was established in 2006 by UNMIK from the (also UNMIK-established) Housing and Property Directorate (HPD), set up in 1999 at the start of the UNMIK mission. UNMIK regulation 2006/50 gave the KPA a mandate to resolve thousands of property-related claims arising out of the 1998-99 conflict. As an extraordinary mechanism to resolve property claims and disputes, the KPA has exclusive jurisdiction over all residential, agricultural, and commercial property claims. At the end of the claim intake period in December 2007, 39,746 claims had

been filed. Among these claims, approximately 90% are for commercial land (including agricultural property), 8% for residential, and 3% for commercial land with buildings or structures on them. Serb residents who left Kosovo at the end of the war account for 90% of KPA's claimants. (Note: All percentages listed above are approximate. End Note)

14. (U) Within the HPD, the Housing and Property Claims Commission (HPCC) adjudicated all claims. With the establishment of the KPA, the HPCC became the Kosovo Property Claims Commission (KPCC). UNMIK appointed the KPCC's members in May 2007. The regulation forming the KPCC also allowed for a losing party in an adjudication to bring its case to an appeals board within the KPA, which was empowered to issue final, binding judgments on all cases. No court in the Kosovo system had jurisdiction over KPA cases. At present, 11,168 claims have been adjudicated.

15. (U) In order to ensure continuity before the entry into force of the Kosovo Constitution on June 15, the text of regulation 2006/50 was replicated in its entirety in the Law on the KPA adopted in June 2008. The KPA retains the same name as it did under UNMIK's administration, with the only difference being the establishment of an additional step in the appeals process. Under the Ahtisaari Plan, ICR Peter Feith is granted the power to appoint the KPA's executive director, board members, and other officials. In the UNMIK era, these officials were appointed by the SRSG. On June 15, the ICO appointed a new KPA board in accordance with these powers. (Note: The Embassy has a seat on the Board as a donor to the KPA. Since 2002, the U.S. government has given

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approximately \$3 million to the KPA to assist in operations. End Note)

Connection with Serbia Broken, but Essential

16. (C) Since its inception, the HPD/KPA operated offices in Serbia, both to access (and be accessed by) Serb claimants, and to obtain copies of cadastral records that Serbian government officials removed from Kosovo municipalities when the Belgrade government pulled out of Kosovo at the end of the 1999 conflict. On June 15, the Serbian government announced it would cease its relationship with the KPA due to its well-known policy of avoiding any contact with the ICO/EULEX missions. The field offices in Serbia are now closed, and KPA officials, since the break in relations with Serbia, have complained to us that without access to claimants and cadastral records, it will be impossible to close cases beyond a few thousand awaiting final adjudication by the KPCC in September. After those are completed, the KPA's ability to obtain sufficient documentation to issue decisions will be severely restricted. KPA officials tell us that barring a change in the situation, the KPA will be unable to continue adjudications by the end of 2008.

Dual Directors

17. (C) Another transition-based issue facing the KPA is the presence of two executive directors, an UNMIK appointee and an ICO appointee. UNMIK-appointed director Leonid Markaryan will remain in his position until the end of December 2008, having been appointed by previous SRSG Joachim Ruecker for that term. The ICO has appointed its own director, Scott Bowen, who is responsible for exercising Ahtisaari-granted powers and sits in the KPA building. By all accounts, the relationship between the two is cooperative, but the situation is confusing. KPA External Relations Officer Sunil Pal told us in July that most employees at the KPA are confused about which director they should turn to for guidance.

Sorting Things Out

18. (C) UK Ambassador to Kosovo Andrew Sparkes serves as

Chairman of the KPA's governing board. On August 19, Sparkes called a meeting of international stakeholders to discuss the challenges facing the KPA and the way ahead. Embassy Poloff, Deputy ICR Fletcher Burton, both KPA directors, EULEX, and SRSG Zannier were present. The group reached consensus on several issues. First, a continued UNMIK presence in the KPA will be essential to re-start Serbian cooperation with the organization. Second, Serbian government cooperation is vital to the KPA's continued operation. Third, given the first two conclusions and the obvious benefit to Kosovo Serbs of having a functioning KPA, the SRSG, Sparkes, and the Embassy agreed to approach Serbian State Secretary for Kosovo Oliver Ivanovic to discuss the subject. The group agreed that the identical nature of the pre- and post-constitution legislation, both of which title the organization as KPA, could make it easier for the "Serbian government to swallow such cooperation," according to Sparkes.

¶9. (C) While there was general agreement that Serbian participation is required to move forward, Burton warned that leaning too far in the direction of the Serbian government might endanger support for the KPA from the Kosovo government. KPA decisions overwhelmingly favor Kosovo Serbs, making the entire process politically unpopular with Kosovo Albanians, and a continued UNMIK presence at the KPA in order to placate the Serbian government might cause political problems for the Kosovo government. The group agreed 1) not to make any concrete promises to the Serbian government and 2) to consult the Kosovo government in order to gain its approval for the plan. A related problem is the legally-mandated requirement that a Kosovo Serb serves on the board, and the ICR has not yet appointed one. Group members agreed that giving the Serbian government, through UNMIK, the opportunity to name its own choice to the board could be problematic. On the other hand, all present concurred that a

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"meaningless" appointment of a Kosovo Serb without the blessing of Belgrade would likely only foreclose cooperation with Serbia and have no positive impact on the problem.

Comment

¶10. (C) The challenges the KPA faces, even in its normal operations, are significant: unpopular decisions, difficult evictions of illegal occupants, fundraising to stay afloat, etc. Beyond that, the challenges of transitioning the KPA from an UNMIK-led institution to a Kosovo institution are also daunting and, indeed, similar to the challenges facing the ICO and the implementation of Ahtisaari as a whole. Put simply, Serbia can decide whether or not the KPA will function and be able to fulfill its mandate, and convincing the Serbian government to cooperate will not be easy under current circumstances. If the KPA stops its work, Kosovo Serbs will be the biggest losers, and this presents a dilemma for the Serbian government. The government in Belgrade has said on many occasions that it wishes to improve the lives of Kosovo Serbs. If this is true, enabling the KPA to function would be a meaningful, concrete way of doing so. End

Comment.

KAIDANOW